IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No. 359 of 2000 a/w
C.O. No. 55 of 2001
Date of decision: 19th September, 2007

State of H P & others ……..Appellants

Versus

Ganga Ram and others ……Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh, J.

Whether approved for reporting ?[1] *.No.*

For the appellants : Mr V. K. Verma, Add. Advocate General.

For the respondent : Mr G. D. Verma, Senior Advocate, assisted by Mr Romesh Verma, Advocate.

Surinder Singh, J.

This judgment will dispose of this appeal and cross-objections filed by the respondents.

The instant appeal has been filed by the appellants-defendants against the respondents-plaintiffs (to be referred now as plaintiffs and defendants as referred by the trial court, feeling aggrieved by and dissatisfied with the impugned judgment and decree, passed by the Additional District Judge, Shimla, H.P. in Civil Suit No.28-S/1 of 95/89 decided on 01.03.2000 whereby the suit filed by the plaintiffs for recovery of Rs.1,75,075/- was decreed with costs and interest at the rate of 6% per annum,

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?.yes.***

from the date of institution of the suit i.e. 31.10.1988 till its realization.

Facts giving rise to the instant appeal are that:

Plaintiffs have been owners in possession of the land comprised in Khasra Nos. 2003, 2005, 2011, 2012 and 2078 situated in Chak, Sarkali, Tehsil Chopal, District Shimla. The defendants had acquired the following land of the plaintiffs for the construction of the road:

a) 3 biswas out of Khasra No.2005 shown as Khasra No.2005/1;

b) 16 biswas out of Khasra No.2011, shown as Khasra No.2011/1; and

c) 6 biswas out of Khasra No.2012/2 shown as Khasra No.2012/2/1.

However, Khasra No.2003 aforesaid, measuring 0.3 biswas, was not acquired but it is alleged that the possession thereof was also unauthorisedly taken by the defendants for constructing a road thereupon. Compensation was paid only for the acquired land which was received by the plaintiffs under protest, but no compensation was ever paid for the three biswas land and Khaliyan on Khasra No.2003. Further, it is alleged that there were 62 numbers of apple trees standing on the acquired land aforesaid which were completely damaged at the time of construction of the road. It was also the case of the plaintiffs that besides it 108

apple trees, aged between 9-10 years, standing over the land, were also damaged due to debris and stones on the un-acquired portion of the land. The Collector Land Acquisition had asked the plaintiffs to produce a certificate from the Patwari regarding damage caused to the apple-trees during the construction of the road. Thus, the plaintiffs moved an application Ex.PW-9/A on 4.12.79 to the Assistant Engineer, H.P.P.W.D. Sub Division Chopal, District Shimla, who certified the damage to 61 apple trees due to alignment of the road vide its certificate Ex.PW-1/A. The aforesaid certificate was stated to have been submitted to defendant No.3. Thereafter, the plaintiffs were asked to get the assessment from the Horticulture Department but the Inspector Horticulture expressed his inability to do so unless and until there are orders from the superior officers. On this, defendant No.3 wrote a letter on 6.12.1980 to the District Horticulture Officer for deputing Horticulture Inspector for the spot inspection and to verify the number and age of the apple trees damaged, during the construction of the road. Defendants also asked the plaintiffs to submit damage report, if caused, to the un-acquired land on the prescribed performa. The plaintiffs vide Ex.PW-6/A submitted the damage case along with the Tatima. Certificate of Junior Engineer was also appended to it whereby he had also certified damage to the Khaliyan of

the plaintiffs. Despite that defendant No.3 did not pay any compensation, for the damage caused to the unacquired land and the apple trees destroyed during the construction of the road, despite completing all the formalities. But again he left it open for consideration as and when the complete documents are submitted to him.

The plaintiffs had also filed Civil Writ Petition No.108 of 1988 in the High Court, which was disposed of on 11.7.1988 on the grounds that there are disputed questions of fact which cannot be decided in the writ petition. The plaintiffs were relegated to the alternative remedy if available to them in case the plaintiffs would avail alternative remedy on or before November 1,1988, respondents would not take the objection of limitation, even if available. However, it was clarified that this will not debar the respondents from pleading or establishing of other defences including the maintainability of such proceedings. Consequently, the plaintiffs filed a suit in the High Court on 31st October, 1988 within the aforesaid stipulated period. After serving notice under section 80 of the Code of Civil Procedure, plaintiffs claimed an amount of Rs.2,10,000/- under various heads, as indicated in the plaint with costs and interest at the rate of 12% per annum.

The suit was resisted and contested by the defendants vide their joint written statement. It was averred by them that neither the land, bearing Khasra No.2003 belonged to the plaintiffs nor the same was acquired. The defendants did not construct any road thereupon. It is also submitted that the plaintiffs never made any representation to the defendants. Existence of *Khaliyan* was also denied. It was also averred that in the writ petition there was no reference to the aforesaid damage being caused by the defendants except damage to the 62 apple trees and nothing beyond that. Jamabandi, for the year 1973-74, nowhere revealed about the existence of the apple orchard over the acquired land. The plantation, if any, after 1973-74 over the acquired land, was of no consequence being after the notification issued under section 4,6 and 7 of the Land Acquisition Act and no damage was caused in any manner as alleged to the property of the plaintiffs. The receipt of notice under section 80 of the Code of Civil Procedure has been admitted by the defendants. Thus prayed for dismissal of the suit also on the ground that the claim was false and frivolous.

On the pleadings of the parties, the learned trial court had framed the following issues:

1. **Whether the road in question had been constructed by the defendants in portion beyond**

the acquired land belonging to the plaintiffs. If so, to what extent? OPP

2. In case issue No.1 is decided in the affirmative whether fruit bearing trees were in existence therein as alleged? OPP

3. Whether the plaintiffs have suffered damages in respect of the land and fruit bearing trees besides crop and Khalian etc. as alleged?

4. Whether the plaintiffs are entitled to the compensation for the removal of alleged debris in the adjoining land to the acquired one? If so, to what extent? OPP

5 Whether the plaintiffs are entitled to interest? If so at what rate and from which date?

6 Relief.

Parties led their evidence. After hearing the parties and appreciating the evidence on record, suit of the plaintiffs was decreed to the above extent with costs and interest, which has been assailed in this appeal on the ground that the learned trial court has wrongly appreciated the evidence on record, which has resulted into miscarriage of justice. Therefore, prayed for acceptance of the appeal.

The appeal was admitted for hearing on 18.12.2000. It appears that the decretal amount was deposited by the defendants. Vide order dated 15.5.2001, an amount of Rs.1,00,000/- was released in favour of the plaintiffs. The balance decretal amount was ordered to remain in the fixed deposit during the pendency of the appeal.

Notice of the appeal was given to the plaintiffs. They have filed cross-objections No.55 of 2001, in this appeal for enhancement of the amount on account of the damage to the Khaliyan to the tune of Rs.20,000/- and an amount of Rs.18,000/- for the market value of the land, which fact was not rightly appreciated.

I have heard Sh.V.K.Verma, learned Additional Advocate General for the appellants/defendants and Shri G.D.Verma, Senior Advocate, assisted by Sh.Romesh Kumar Verma, Advocate for respondents/plaintiffs and have carefully gone through the evidence on record.

Sh. V. K. Verma, learned Additional Advocate General has forcefully argued that the plaintiffs have failed to prove that the defendants had constructed a road over a portion of khasra No.2003 and further that the acquired land was having apple trees, as alleged. He also referred to the evidence on record and ventilated that the impugned judgment and decree are unsustainable.

Contra Sh.G.D.Verma, learned Senior Advocate led me through the evidence on record and referred important documents which favoured him while supporting the findings on issues in his favour. It is further submitted that the learned trial court did not adequately assess the value of khaliyan and no amount of damage was awarded for the land, comprised in Khasra No.2003, over which the road was constructed, therefore, the impugned decree is required to be modified to that extent. Thus, prayed for dismissal of the appeal and acceptance of cross-objections.

To appreciate the rival contentions, it shall be relevant to refer to the evidence of the parties led on the respective issues.

There is no dispute regarding the acquisition of land, comprised in Khasra No.2005, 2011 and 2012 to the extent as mentioned in the plaint. The Land Acquisition Collector has passed the award Ex.PW.12/A on 27th December, 1979 with respect to the acquired land.

Precisely, now the case of the plaintiffs is that the defendants did not make any payment, with respect to 61 apple trees, which were in existence on the acquired land and were damaged by constructing the road and secondly the road was constructed over three biswas of land bearing Khasra No.2003, which was not

acquired and there was a khalyan on this portion of the land.

In order to prove these facts, the plaintiffs have examined Sh.H.R.Jaidka (PW1) the then Assistant Engineer in whose jurisdiction the disputed land fell. According to him, alignment of Dadahu Chopal Road was carried out during his period and this road was to pass through a portion of the land of the plaintiffs. There were 61 numbers of apple trees in the alignment of the above road. The witness has proved his report Ex.PW1/A, which was recorded on the application dated 19.11.80 of the plaintiffs. This certificate / report of the Assistant Engineer, H.P.P.W.D. (B&R) Chopal (H.P.) reads as under:

> **"Certified that in village Sarkali, the orchard of Sh.Sant Ram, Ganga Ram etc. s/o Sh. Sadh Ram comes in the alignment of Dadaho Chopal Road Mile 60% to 67% total plants of apple= 61 Nos."**

This document is also signed by the then Junior Engineer Brij Lal (PW10). In the cross-examination the witness has clarified that entry of the abovesaid details is also given in the Measurement Book (M.B.)

Om Parkash (PW2) Patwari concerned has testified the fact that the road was constructed over Khasra No.2003 belonging to the plaintiffs. Tatima Ex.PW2/A was prepared by him as per the spot position. PW4 Surat Singh Mate of P.W.D. and PW5 Kewal Ram have corroborated his version and further stated that a Khaliyan was also damaged. Brij Lal Junior Engineer also testified it on oath.

Satish Kumar (PW3) Kanungo, LAO office at Rampur has stated that as per the records Khasra No.2003 was never acquired for the construction of the road.

PW6 Giaru Ram Kanungo had checked the damage claim (Ex.PW6/A) on the spot and it was found to be correct and the same was sent to the XEN concerned.

PW7 Shrawn Kumar, Senior Assistant of the office of Executive Engineer, HPPWD Chopal has admitted the fact from the records that the damage case of the plaintiffs was received in the office of the Executive Engineer but no payment was made to the plaintiffs against this case. He also produced the summoned record. Copy of the damage report Ex.PW-7/A, bears the signatures of the Junior Engineer of their Department, which fact was not disputed.

PW-11 Sh.B.S.Bajwa, Deputy Director, Horticulture, has given assessment of 61 apple trees which were alleged to have been uprooted /damaged on

the acquired land of the plaintiffs, his report to the effect is Ex.PW-11/A and extract is Ex.PW-11/B. In his report he had taken the economic bearing life of the apple plants to be 45 years. Further the damage caused to the property of the plaintiffs, as alleged, has also been substantiated by plaintiff Ganga Ram as PW-12.

To counter the aforesaid evidence of the plaintiffs, the defendants have examined Davinder Singh, Patwari, as DW-1, who produced the Jamabandi for the year 1973-74 in which Khalyan has not been shown. Ganga Ram (DW-2) and Ram Singh (DW3) have denied existence of the orchard over the land in question. DW4 S.C.Singal, Executive Engineer, has stated that during his tenure w.e.f. 1984 to 1987, when he was posted as Assistant Engineer in the Sub Division Chopal, no damage to the orchard of the plaintiffs was ever done by the construction of the road.

On the reappraisal and critical examination of the aforesaid evidence by me it stands proved that the defendants had constructed a road over three biswas of Khasra No.2003 which had a khaliyan and this Khasra Number was not at all acquired by the defendants. Further existence of 61 apple trees over the acquired land also stood established, value of which was assessed by the Deputy Director of

Horticulture, to which there is no rebuttal. Plaintiffs claimed an amount of Rs.18,000/- for three biswas of land over which a khalyan was situated and Rs.20,000/- for the damages caused to the khaliyan. The trial court has assessed the value of the land of three biswas of Khasra No.2003 to the tune of Rs.75/- on account of the fact that the Land Acquisition Collector had awarded an amount of Rs.500/- per bigha for the acquired land and Rs.5000/-for the damage caused to the khaliyan was reasonably decreed as there is no cogent evidence on record that the value of the khaliyan at the relevant time was Rs.20,000/-. As far as damage caused to the apple trees are concerned, assessment of the said 61 apple trees was rightly made by an expert. Therefore, the claim of the plaintiffs with respect to 61 apple trees, existing on the acquired land, which were damaged/destroyed during the construction of the road has been rightly assessed at Rs.1,70,000/-.

Thus, the trial court had rightly awarded an amount of Rs.1,75,075/- i.e.(Rs.1,70,000/- for 61 apple trees) plus Rs.5000/- towards the damages caused to the khaliyan and Rs.75/- for three biswas of land in Khasra No.2003 with costs and interests. The objectors/claimants (plaintiffs)are not able to prove that they are entitled for enhancement of the compensation, as claimed in the cross-objections.

Hence, the appeal as well as the cross-objections require no interference. The issue wise findings are upheld.

No other point is urged before me.

For the foregoing reasons, the appeal as well as the cross-objections are dismissed. The balance amount, deposited in the Registry of this Court, be released to the plaintiffs with interest accrued thereon. The parties are left to bear their own costs.

September 19, 2007 (Surinder Singh),J.
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